

3. Tr. 8/31/10 at 84-85, 95-96.

On September 22, 2010, Swanton wrote to the Board indicating that the agreed-upon meter test had been performed, and that the test showed the middle gear, or dial, on the register was defective and could cause the adjacent gear, or dial, to advance more than one digit at a time. This defect could result in occasional meter readings that were 1,000 kWh too high.⁴ This is the same issue that the Petitioners claimed was occurring with the meter that was installed in November of 2005, the readings from which eventually led to the installation of the demand meter.⁵

In light of the test results, Swanton reviewed the Petitioners' billing history dating back to the installation of the meter in question, and proposed billing adjustments and associated refunds for a total of ten different occasions over the years when the meter register appeared to have incorrectly jumped 1,000 kWh.⁶ Additionally, Swanton removed the demand meter that was installed in January of 2010, and returned the Petitioners to the regular residential rate classification.⁷ The Petitioners have indicated that the recalculated bill amounts, along with their associated refunds, and their return to the regular residential rate classification were acceptable and they were satisfied with Swanton's actions.⁸ Both Petitioners and Swanton have asked that the case be considered closed.⁹

Because both the Petitioners and Swanton asked that this proceeding be considered closed, I recommend that the Board close this Docket.

However, I believe there are aspects of this case that should be brought to the Board's attention so that similar cases might be avoided in the future. First, I commend Swanton for volunteering to have the disputed meter tested by an outside third party and to abide by the results of that test. Second, Swanton should also be commended for its response upon receiving the test results. Those test results showed that the complaints registered by the Petitioners were likely valid and Swanton took steps to promptly correct what appeared to be previous billing

4. Swanton letter to Susan M. Hudson, Clerk of the Board, dated 9/17/10 ("Swanton Letter") at 1.

5. Exh. Swanton-2 at 1-3; exh. Pilon-2.

6. Swanton Letter at 1.

7. Petitioner and Swanton Letter to Susan M. Hudson, Clerk of the Board, dated 9/17/10 ("Joint Letter").

8. *Id.*

9. *Id.*

errors that resulted from reliance on a faulty meter register, and to restore the Petitioners to their proper billing classification.

That said, I believe that Swanton's actions prior to the post-hearing meter test were inadequate, and likely turned what should have been a brief and easily corrected dispute into a years-long process that required the unnecessary expenditure of time and resources for all involved. First, Swanton stated at the technical hearing that it did not perform a meter test when the meter in question was first installed in November of 2005. Instead, Swanton relied on the original factory test and certification because the meter was new at the time of installation,¹⁰ even though Vermont law requires that a meter be tested "for correct connection and proper mechanical condition in its permanent position at the time of installation or within 60 days thereafter."¹¹ Had Swanton performed the required test, it is possible that it would have discovered the damaged register dial, especially since the Petitioners first noted a 1,000 kWh jump only two months after installation. Second, while Swanton did perform a serial meter test from January 16, 2008, until March 24, 2009,¹² such a test is far more likely to identify a faulty meter that has a continuous malfunction rather than one that is malfunctioning on a sporadic basis. The very substance of the Petitioners' complaints was that the meter in question was only occasionally malfunctioning, and that when it did it was rolling the thousands value kWh digit over when it should not have been (e.g., when the adjacent hundreds value digit was turning from 6 to 7, or 7 to 8).¹³ The rapidity of the third-party test which found the mechanical fault in the register dial strongly suggests that, had Swanton taken the details of the Petitioners' complaints more seriously,¹⁴ the damaged register would have been identified many months, if not years ago.

10. Tr. 8/31/10 at 47 (Lague).

11. 30 V.S.A. § 2813.

12. Exh. Swanton-2 at 2.

13. Exh. Swanton-2 at 2-3; exh. Pilon-2.

14. The Petitioners alleged that the meter was jumping 1,000 kWh in the span of several hours. Tr. 8/31/10 at 17 (Pilon); exh. Swanton-2 at 2-3. During the technical hearing, a Swanton representative opined that the meter jumps described by the Petitioners could not have represented actual consumption over the time periods claimed to be involved because such high usage would have overwhelmed the service to the residence. Tr. 8/31/10 at 49-50 (Lague).

In short, while Swanton deserves to be commended for its prompt response when confronted with the results of the meter test, the evidence in this case strongly suggests that such a test should have been performed far earlier in this process, and had such a test been performed in a more timely fashion, that the Petitioners, Swanton, the Department of Public Service, and the Board may have been able to avoid a significant expenditure of time and resources. In the future, I believe Swanton should more carefully consider the details of any billing disputes, and whether a simple meter test or inspection that specifically addresses the details of such a dispute is a more appropriate means for reaching resolution with a complaining consumer.

Dated at Montpelier, Vermont, this 4th day of October, 2010.

s/ John J. Cotter
John J. Cotter, Esq., Hearing Officer

BOARD DISCUSSION

Because both the Petitioners and Swanton asked that this Docket be considered closed, and because no comments were received from any of the parties on the Hearing Officer's Report and Recommendation, we are accepting that Report and Recommendation and are closing this Docket. However, we are writing our own separate Board discussion to express our concerns with the manner in which Swanton handled the Petitioners' complaint in this matter.

The evidence in this case compels us to conclude that Swanton simply did not take the complaints of the Petitioners seriously. The Petitioners first complained to Swanton in February of 2006 that their meter was not accurately recording their usage. The substance of the Petitioners' ongoing complaints makes it clear that there was a potential mechanical problem with the meter's register. It was not until January of 2008, almost two years after the Petitioners first complained about their meter, that Swanton performed any test of the meter at all. And, while the serial meter test performed by Swanton encompassed the time period from January 16, 2008, through March 24, 2009, without uncovering a problem with the Petitioners' meter, the use of serial meter testing in response to the type of complaints being lodged was flawed because of its potential to miss the type of periodic mechanical malfunction that the Petitioners had reported. Based on the results of the serial meter test, and in spite of subsequent complaints from the Petitioners that the meter register was still periodically malfunctioning, Swanton never inspected the register, and instead placed the Petitioners on the demand rate based on the register's readings.

It was only after the Board opened an investigation into the Petitioners' complaints and held a technical hearing that Swanton offered to have the meter, including the register, tested. The technical hearing, and Swanton's resulting offer to have the meter tested, occurred on August 31, 2010. The meter was tested by Green Mountain Power Corporation on September 1, 2010, only one day after the technical hearing, and was immediately found to have a defective register consistent with the complaints the Petitioners had been lodging for approximately four years. Given the nature of the Petitioners' complaints, Swanton's failure to test the mechanical function of the register until September 1, 2010 is inexplicable. The fact that it took only one

day to send the meter to a third party and have the defect found elevates Swanton's inaction to the level of inexcusable.

Swanton's failure to respond to the Petitioners' complaints in an appropriate and responsible fashion caused the Petitioners to overpay Swanton, based upon calculations agreed to by Swanton and the Petitioners, a total of \$1,651.41 due to the faulty register. Additionally, Swanton's failure to act caused the Petitioners, the Department of Public Service, the Public Service Board, and Swanton itself, to unnecessarily expend valuable time and resources to correct a problem that should have been corrected in short order some years before. And, while Swanton's refund of Petitioners' overpayments was timely once the meter's register was actually tested and found to be faulty, Swanton's delay in seriously addressing the problems raised by the Petitioners' complaints is simply unacceptable. In the future, we expect Swanton to respond to its customers' complaints in a more responsible fashion.

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The Report and Recommendation of the Hearing Officer is accepted.
2. This Docket shall be closed.

Dated at Montpelier, Vermont, this 27th day of October, 2010.

<u>s/ James Volz</u>)	
)	PUBLIC SERVICE
)	
)	BOARD
)	
)	OF VERMONT
<u>s/ John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: October 27, 2010

ATTEST: s/ Judith C. Whitney
Deputy Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.